

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THE STATE OF ARIZONA,

Plaintiff,

vs.

RICHARD MARK SCHMERMAN
DOB: 08/23/1959

Defendant.

CR2017-001208-001

PLEA AGREEMENT

The State of Arizona and the Defendant hereby agree to the following disposition of this case:

Plea: The Defendant agrees to plead **GUILTY** to:

COUNT 1: FRAUDULENT SCHEMES AND ARTIFICES, A CLASS 2 FELONY, in violation of A.R.S. §§ 13-2301, 13-2310, 13-701, 13-702, and 13-801 committed between January 1, 2005, and January 31, 2013.

COUNT 2: FRAUDULENT SCHEMES AND ARTIFICES, A CLASS 2 FELONY, in violation of A.R.S. §§ 13-2301, 13-2310, 13-701, 13-702, and 13-801 committed between April 1, 2010, and January 31, 2013.

COUNT 5: THEFT, A CLASS 2 FELONY, in violation of A.R.S. §§ 13-1801, 13-1802, 13-701, 13-702, and 13-801 committed between August 1, 2005, and January 31, 2013.

COUNT 10: THEFT, A CLASS 2 FELONY, in violation of A.R.S. §§ 13-1801, 13-1802, 13-701, 13-702, and 13-801 committed between August 1, 2005 and January 31, 2013.

These are non-dangerous, non-repetitive offenses under the criminal code.

THIS OFFER EXPIRES AND IS REVOKED IF NOT ENTERED IN COURT BY 10/25/2017.

Terms: On the following understandings, terms and conditions:

- As to all Counts:** The crime carries a presumptive sentence of 5 years; a minimum sentence of 4 years (3 years if trial court makes exceptional circumstances finding); and a maximum sentence of 10 years (12.5 years if trial court makes exceptional circumstances finding). Probation is available. Restitution of economic loss to the victim and waiver of extradition for probation revocation procedures are required. The maximum fine that can be imposed is \$150,000.00 plus an 83% surcharge plus \$20.00 pursuant to A.R.S. § 12-269 plus a \$13.00 assessment pursuant to A.R.S. § 12-116.04 and a \$2.00 assessment pursuant A.R.S. §12-116.09. If the Defendant is sentenced to prison, the Defendant shall also be sentenced to serve a term of community supervision equal to one-seventh of the prison term to be served consecutively to the actual period of imprisonment. If the Defendant fails to abide by the conditions of community supervision, the Defendant can be required to serve the remaining term of community supervision in prison. Within 30 days of being sentenced, pursuant to A.R.S. 13-610, the defendant shall provide a sufficient sample of blood or other bodily substance for deoxyribonucleic acid (DNA) testing and extraction to be used for law enforcement identification purposes and/or for use in a criminal prosecution and/or for use in a proceeding under title 36, chapter 37. Special conditions regarding the sentence imposed by statute (if any) are: **None**.
- The parties stipulate to the following additional terms, subject to court approval at the time of sentencing as set forth in paragraph 7: **As to Counts 1, 2 and 5, the defendant will be sentenced to the Arizona Department of Corrections for 5 years to run concurrently. As to Count 10, the defendant will be sentenced to supervised probation with white collar terms to begin upon his physical release from prison in Counts 1, 2 and 5. The defendant agrees to pay restitution for all economic loss to any and all victims (or the victim's insurance**

carriers) for all charges, including charges dismissed or not filed as part of this plea agreement in the amount of \$3,009,173.32. The parties agree to waive Rule 7.2 pending sentencing.

The Defendant agrees to the attached factual basis addendum and victim list addendum.

3. The following charges are dismissed, or if not yet filed, shall not be brought against the Defendant by the Arizona Attorney General's Office: Counts 3, 4; 6-9; 11-17. The State of Arizona agrees not to file additional charges arising from Arizona Corporation Commission Docket No. S-20757A-10-0373.
4. This agreement serves to amend the complaint, indictment, or information, to charge the offense to which the Defendant pleads, without the filing of any additional pleading. However, if the plea is rejected by the court or withdrawn by either party, or if the conviction is subsequently reversed, the original charges and any charges that are dismissed by reason of this plea agreement are automatically reinstated.
5. If the Defendant is charged with a felony, he hereby waives and gives up his rights to a preliminary hearing or other probable cause determination on the charges to which he pleads. The Defendant agrees that this agreement shall not be binding on the State should the Defendant be charged with or commit a crime between the time of this agreement and the time for sentencing in this cause; nor shall this agreement be binding on the State until the State confirms all representations made by the Defendant and his attorney, to-wit: The defendant avows to having NO prior felony convictions and that he was not on probation, release, parole or community supervision at the time of the offense. If the Defendant fails to appear for sentencing, the court may disregard the stipulated sentence and impose any lawful sentence which is the same as or exceeds the stipulated sentence in the plea agreement. In the event the court rejects the plea, or either the State or the Defendant withdraws the plea, the Defendant hereby waives and gives up his right to a preliminary hearing or other probable cause determination on the original charges.
6. Unless this plea is rejected by the court or withdrawn by either party, the Defendant hereby waives and gives up any and all motions, defenses, objections, or requests which he has made or raised, or could assert hereafter, to the court's entry of judgment against him and imposition of a sentence upon him consistent with this agreement. By entering this agreement, the Defendant further waives and gives up the right to appeal.
7. The parties hereto fully and completely understand and agree that by entering into a plea agreement, the defendant consents to judicial fact finding by preponderance of the evidence as to any aspect or enhancement of sentence and that any sentence either stipulated to or recommended herein in paragraph two is not binding on the court. In making the sentencing determination, the court is not bound by the rules of evidence. If after accepting this plea the court concludes that any of the plea agreement's provisions regarding the sentence or the term and conditions of probation are inappropriate, it can reject the plea. If the court decides to reject the plea agreement provisions regarding sentencing, it must give both the state and the Defendant an opportunity to withdraw from the plea agreement. In case this plea agreement is withdrawn, all original charges will automatically be reinstated. The Defendant in such case waives and gives up his right to a probable cause determination on the original charges.
8. If the court decides to reject the plea agreement provisions regarding sentencing and neither the State nor the Defendant elects to withdraw the plea agreement, then any sentence either stipulated to or recommended herein in paragraph 2 is not binding upon the court, and the court is bound only by the sentencing limits set forth in paragraph 1 and the applicable statutes.
9. This plea agreement does not in any way compromise, or provide any protection or defense with regard to, any civil action, whether by or on behalf of a victim or any government entity, and whether previously or later filed, including but not limited to an action pursuant to A.R.S. Title 13, Chapter 23 or § 13-4301-4315; nor does it abrogate or limit the provisions of A.R.S. § 13-2314(H) or A.R.S. § 13-4310(C), or in any other way adversely affect the State in any current or future forfeiture proceeding or other civil action pursuant to A.R.S. § 13-2314, § 13-4301-4315, or § 32-1993, if applicable.
10. I understand that if I am not a citizen of the United States that my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that pleading guilty or no contest to a

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crime may affect my immigration status. Admitting guilt may result in deportation even if the charge is later dismissed. My plea or admission of guilt could result in my deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen. I understand that I am not required to disclose my legal status in the United States to the court.

11. I have read and understand all of the provisions, on all of the pages, of this agreement. I have discussed the case and my constitutional rights with my lawyer. My lawyer has explained the nature of the charge(s) and the elements of the crime(s) to which I am pleading. I understand that by pleading **GUILTY** I will be waiving and giving up my right to a determination of probable cause, to a trial by jury to determine guilt and to determine any fact used to impose a sentence within the range stated above in paragraph one, to confront, cross-examine, compel the attendance of witnesses, to present evidence in my behalf, my right to remain silent, my privilege against self-incrimination, presumption of innocence and right to appeal. I agree to enter my plea as indicated above on the terms and conditions set forth herein. I fully understand that if, as part of this plea agreement, I am granted probation by the court, the terms and conditions thereof are subject to modification at any time during the period of probation. I understand that if I violate any of the written conditions of my probation, my probation may be terminated and I can be sentenced to any term or terms stated above in paragraph one, without limitation.

I have personally and voluntarily placed my initials in each of the above boxes and signed the signature line below to indicate I read and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement.

Date: October 25, 2017

Defendant

Richard Mark Schmerman

I have discussed this case with my client in detail and advised him of his constitutional rights and all possible defenses. I have also explained the nature of the charge(s) and the elements of the crime(s). I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Date: 10/25/17

Defense Counsel

Beverly Rudnick

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date: 10/26/17

Prosecutor

Adam J Schwartz

Factual Basis Addendum:

1. The parties hereto agree to the following factual basis for the offenses committed by Defendant:

Count 1: In Maricopa County, Arizona, between January 1, 2005, and January 31, 2013, Richard Mark Scherman, pursuant to a scheme or artifice to defraud, knowingly obtained a benefit by means of false or fraudulent pretenses, representations, promises or material omissions. Specifically, Richard Mark Scherman (1) purported to earn income for the investors in amounts that were partially or wholly fictitious; (2) made payments of purported income or principal to some investors from amounts that other investors invested in the fraudulent arrangement; and (3) without the investors' knowledge, appropriated significant amounts of the investors' cash or property.

Count 2: In Maricopa County, Arizona, between April 1, 2010, and January 31, 2013, Richard Mark Scherman, pursuant to a scheme or artifice to defraud, knowingly obtained a benefit by means of false or fraudulent pretenses, representations, promises or material omissions. Specifically, Richard Mark Scherman received investment management fees from Charles Schwab investor accounts after his access to those investor accounts had been terminated.

Count 5: In Maricopa County, Arizona, between August 1, 2005, and January 31, 2013, Richard Mark Scherman, knowingly converted for an unauthorized use, property belonging to Scott and/or Shirley Stowe that had been entrusted to Richard Mark Scherman and placed in Richard Mark Scherman's possession for a limited use. The property was U.S. Currency in excess of \$25,000.

Count 10: In Maricopa County, Arizona, between June 22, 2005, and January 31, 2013, Richard Mark Scherman, knowingly converted for an unauthorized use, property belonging to Burritt Steward and/or Paemla Moran that had been entrusted to Richard Mark Scherman and placed in Richard Mark Scherman's possession for a limited use. The property was U.S. Currency in excess of \$25,000.

I have personally and voluntarily placed my initials in each of the above boxes and signed the signature line below to indicate I read and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement.

Date: October 25, 2017

Defendant

Richard Mark Scherman

I have discussed this case with my client in detail and advised him of his constitutional rights and all possible defenses. I have also explained the nature of the charge(s) and the elements of the crime(s). I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Date: 10/24/17

Defense Counsel

Beverly Rudnick

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date: 10/25/17

Prosecutor

Adam J Schwartz

Victim List Addendum:

The following victims are associated with Count 1:

<u>Claude Beach & Karen Willard</u>	<u>Judith Levin</u>
<u>C&P Beauvais Trust</u>	<u>Gregory Lozes & Marcy Henderson</u>
<u>Barton Brown & Michelle Brown</u>	<u>Dr. Walter Magen & Joan Magen</u>
<u>Samuel Brown</u>	<u>Michael Robert Marlowe</u>
<u>Michelle Dameshek & Dr. H Lee Dameshek</u>	<u>Douglas McKee & Christy Shields-McKee</u>
<u>Jo Anne Delle</u>	<u>Pay Olvey</u>
<u>Desert Neurosurgery PC</u>	<u>Linda O'Neal</u>
<u>Pat Durand & Mike Durand</u>	<u>Frances Pawlik</u>
<u>Bernice Elson</u>	<u>Judy Pellish & Rita Pellish</u>
<u>Joshua Fischer</u>	<u>P.V. Perryman & Michelle Perryman</u>
<u>F.G. Gurule & Martin Sambrano</u>	<u>Gary Potter & Janine Potter</u>
<u>Betty Earle Hempel</u>	<u>Nancy Potter</u>
<u>Terence Jacquemin & Tonja Marie Jacquemin</u>	<u>Sandra Robinson</u>
<u>David Kallgren & Leslie Van Barselaar</u>	<u>Rose Family Trust</u>
<u>Peter Kallgren</u>	<u>Mary Lou Sirigano</u>
<u>David Lane & Leesa Lane</u>	<u>Burritt Steward & Pamela Moran</u>
<u>Mark Levine</u>	<u>Carlos Varela & Reba Varela</u>
<u>Adam Levine</u>	<u>Max Witter</u>
<u>Levine LTD. Partnership</u>	<u>Bernice Yukolis</u>

The following victims are associated with Count 2:

<u>James Callan</u>	<u>Randall Parlova</u>
<u>Ann Draganich & Louis Draganich</u>	<u>Melvyn C Rothman & Barbara Rothman</u>
<u>Benjamin Green & Brigitte Finley Green</u>	<u>Stephen Rubin & Joan Rubin</u>
<u>F.G. Gurule & Martin Sambrano</u>	<u>Lyman Sims & Doreen Sims</u>
<u>Hempel Family Trust</u>	<u>Marian Voss</u>
<u>Betty Earle Hempel</u>	<u>Vrla Survivors Trust</u>
<u>David Kallgren & Carl Kallgren & Wendy Kallgren & Bethany Marshall</u>	<u>Eve-Marie Vrla</u>
<u>E Paul Koury</u>	<u>Rolf Vrla</u>
<u>Philip Magen & Tara Wilcox</u>	<u>Dick Witter</u>
<u>Amy Montaldo & Richard Moran</u>	

I have personally and voluntarily placed my initials in each of the above boxes and signed the signature line below to indicate I read and approved all of the previous paragraphs in this agreement, both individually and as a total binding agreement.

Date: October 25, 2017

Defendant

Richard Mark Schmerman

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I have discussed this case with my client in detail and advised him of his constitutional rights and all possible defenses. I have also explained the nature of the charge(s) and the elements of the crime(s). I believe that the plea and disposition set forth herein are appropriate under the facts of this case. I concur in the entry of the plea as indicated above and on the terms and conditions set forth herein.

Date: 10/24/17 Defense Counsel B. J. Rudnick
Beverly Rudnick

I have reviewed this matter and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

Date: 10/23/17 Prosecutor Adam J. Schwartz
Adam J Schwartz